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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of) DOCKET FILE COPY ORIGINAL
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Application of AT&T Corp.)
and Teleport Communications) CC Docket No. 98-24
Group, Inc. for Transfer of)
Control)
_____)

PETITION OF SPRINT FOR INVESTIGATION AND OTHER RELIEF

Sprint Communications Company L.P. ("Sprint"), pursuant to the Commission's Public Notice DA 98-369 (released February 25, 1998) and Public Notice DA 98-558 (released March 24, 1998) hereby respectfully requests that the above-captioned application of AT&T and Teleport Communications Group ("TGC") be subject to investigation or, in the alternative, approved only with conditions. In support thereof, Sprint states as follows.

The Commission's responsibility to determine whether a proposed merger is in the public interest includes the requirement that the Commission analyze the merger's likely effect "on Commission policies encouraging competition..." *Bell Atlantic/NYNEX Merger Order*, 12 FCC Rcd 19985, 20003 (¶32) (1997). If the Commission determines that a proposed merger is likely to lessen competition in violation of Section 7 of the Clayton Act, it has the authority under both the Communications Act and the Clayton Act to impose conditions on

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the merger as are necessary for the public interest to cure such violation. *Id.* at 20001 (¶29 and fn. 57).

AT&T claims that its proposed acquisition of TCG will "clearly and demonstrably benefit the public interest by increasing competition..." (Application at 7). However, AT&T does not, as it must,¹ provide meaningful support for this assertion. AT&T's entire affirmative case consists of a single sentence claiming that its ability to provide "local services will be significantly enhanced if AT&T has alternative local infrastructure available to it within its control and management." (*Id.*)

Sprint agrees that AT&T and other carriers seeking to enter the local market through the use of BOC facilities have been frustrated by numerous difficulties and that the prospects for access and other local competition would be "significantly enhanced" by the availability of "alternative local infrastructure." It does not follow, however, that to realize the benefits of such alternative infrastructure, AT&T must acquire the exclusive "control and management of such facilities." Rather, such exclusivity may well harm the future

¹ See, e.g., *The Merger of MCI Communications Corporation and British Telecommunications plc*, 12 FCC Rcd 15321, 15355 (1997) (Applicants are required to "demonstrate that, on balance, the proposed merger will be pro-competitive and thus serve the public interest, convenience and necessity").

development of access and local competition, and may perhaps, in the long run, damage long distance competition as well.

The AT&T acquisition of TCG will tie the largest long distance carrier (by a substantial margin) to the largest and most ubiquitous CAP. The acquisition adds to the consolidation already contemplated by the unification of MCI and WorldCom with the second largest CAP, MFS, as well as with Brooks Fiber. AT&T, MCI and WorldCom together account for 71.9 percent of the long distance market.² All of these carriers will, if the proposed recent acquisitions are permitted, control, and therefore exclusively use to the maximum extent possible, their affiliated access providers. Moreover, the shrinking of the market for independent CAPs will be exacerbated if and when the RBOCs are allowed to provide in-region long distance service because the RBOCs would then exclusively use their own affiliated access provider.

Under these circumstances, the target market for new CAPs will become quite limited. Given the ties between major IXC's and CAPs -- and, in particular, the absorption of TCG into AT&T for which approval is sought here -- it is difficult to see what possibilities would remain for CAPs to continue to try to enter the local market. It may be that CAP competition would, in any

² Based on fourth quarter 1997 toll revenues, "FCC Long Distance Market Shares, Fourth Quarter 1997" (released March 1998), Table 3.4.

case, have developed through combined local-long distance operations and that long distance carriers would have sought to enter the access or local service markets entirely through self-provisioning. Sprint obviously does not suggest that the Commission prohibit such self-provisioning by integrated entities (subject, of course, to the requirements of Section 272). Rather, Sprint's point is simply that it may not be best for competition to hasten the consolidation process by allowing an acquisition which will have the effect of terminating what is, at present, by far the most substantial independent effort to provide access and local service.

As for long distance services, there is no immediate problem, but there may well be a very serious problem over the long run. At this time, the BOCs control virtually all of the access market, and AT&T's acquisition of TCG will not have any immediate impact upon this situation. Unfortunately, as TCG's local operations expand, it will provide AT&T with alternatives to BOC access services which AT&T may then deny its competitors. Thus, even if some limited access service alternative develops through AT&T's own infrastructure provider, AT&T may well decide to forego profit optimization from the sale of access in favor of raising the cost of such access to its long distance competitors. In other words, it may be economically reasonable for AT&T to decide to simply price at BOC levels (even if this

does not maximize profits for its access service) in order to leverage whatever power it gains in the access market to raise the costs to rivals in the larger long distance market.

To make matters worse, as AT&T shifts its own access traffic off the BOC network and onto its own (TCG) facilities, the BOCs will lose the revenues associated with that traffic and will, in all likelihood, seek to make up for such loss by raising prices to their remaining customers. The fact that price caps exist for LEC access services does not rule out such a possibility.³ Over time, this will further increase the disparity in access cost between AT&T and its competitors.

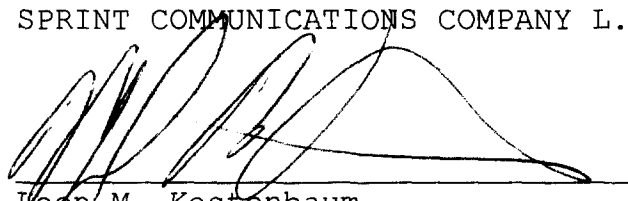
For these reasons, Sprint respectfully requests that AT&T's application be subject to a full investigation to determine whether its acquisition of TCG will promote competition and will otherwise be consistent with the public interest. At a minimum, the Commission should approve the AT&T application only with the conditions that: (1) TCG is maintained as a separate entity, and

³ To the extent price cap LECs have headroom (that is, their API is less than their PCI), they will be able to increase their rates without exceeding their PCI. Furthermore, as AT&T shifts its access demand to TCG from the LECs, the LECs' revenues will, all other things being equal, decline. The impact of fixed exogenous cost changes (e.g., USF contributions) will be even greater because they are applied over a smaller revenue base.

(2) TCG is subject to nondiscriminatory access requirements. Since AT&T proposes in its application to retain the separate status of TCG indefinitely, these conditions should not prove burdensome.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.

A large, stylized handwritten signature in black ink, appearing to read 'Leon M. Kestenbaum', is written over a horizontal line.

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April 1, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **PETITION OF SPRINT FOR INVESTIGATION AND OTHER RELIEF** was sent by hand or by United States first-class mail, postage prepaid, on this the 1st day of April, 1998 to the below-listed parties:

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